

UNITED STATES DISTRICT COURT

for the
Western District of WashingtonIn the Matter of the Search of
(Briefly describe the property to be searched
or identify the person by name and address)All electronically stored information and communications contained in,
related to and associated with the e-mail accounts jenekmarket@
gmail.com & violka410@gmail.com; and subscriber accounts
crestsmile & vipsmile, controlled by eBay/PayPal

Case No.

MJ13-5003

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):

See Attachment A, attached hereto and incorporated herein by reference.

located in the Northern District of California, there is now concealed (identify the person or describe the property to be seized):

See Attachment B, attached hereto and incorporated herein by reference.

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- evidence of a crime;
- contraband, fruits of crime, or other items illegally possessed;
- property designed for use, intended for use, or used in committing a crime;
- a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section	Offense Description
18 U.S.C. §§ 541; 542; 1341	Entry of Goods Falsey Classified & by Means of False Statements; Mail Fraud
18 U.S.C. §§ 545; 1343; 2320(a)	Smuggling Goods into the United States; Wire Fraud; Trafficking in Counterfeit Goods
49 U.S.C. § 5124	Criminal Violations of the Hazardous Materials Transportation Act

The application is based on these facts:

See Affidavit of Special Agent Trina Ledbetter, attached hereto and incorporated herein by reference.

- Continued on the attached sheet.
- Delayed notice of _____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.



Trina Ledbetter
Applicant's signature

TRINA LEDBETTER, Special Agent, ICE

Printed name and title

Sworn to before me and signed in my presence.

Date: 1-4-2013



DAVID W. CHRISTEL
Judge's signature

City and state: Vancouver, Washington

DAVID W. CHRISTEL, United States Magistrate Judge
Printed name and title

AFFIDAVIT

STATE OF WASHINGTON }
COUNTY OF CLARK. } ss

I, Trina Ledbetter being first duly sworn, depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

7 1. I am a Special Agent with the Department of Homeland Security,
8 Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI),
9 and have been so employed for 20 years. ICE-HSI is responsible for enforcing the
10 Customs laws, Immigration laws, and federal criminal statutes of the United States. I am
11 a law enforcement officer of the United States within the meaning of Section 2510(7) of
12 Title 18, United States Code, and I am authorized by law to conduct investigations and to
13 make arrests for felony offenses. I have investigated and/or participated in many federal
14 criminal investigations involving trafficking in counterfeit goods or services, seizing
15 counterfeit merchandise and the proceeds from the sale of counterfeit merchandise, fraud,
16 smuggling, identity theft and related illegal alien activity, human trafficking, and child
17 pornography. As a result of my training and experience, I am familiar with federal laws
18 that prohibit smuggling merchandise into the United States, that prohibit fraudulently
19 importing merchandise into the United States, and that prohibit using false and fraudulent
20 documents to introduce this merchandise into the commerce of the United States.

21 2. I make this affidavit in support of an application for search warrants,
22 pursuant to Title 18, United States Code, Section 2703, to search the electronic
23 communications contained in the following accounts:

24 a. jenekmarket@gmail.com and violka410@gmail.com, subscriber accounts
25 controlled by Google Inc. (hereinafter Google) at 1600 Amphitheater Parkway, Mountain
26 View, California 94043; and

27 b. crests smile and vips smile, subscriber accounts controlled by eBay/PayPal,

1 located at 2145 Hamilton Avenue, San Jose, CA 95125.

2 The information to be searched is described in the following paragraphs and in
3 Attachment A. This affidavit is made in support of an application for a search warrant
4 under 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A) to require the service
5 providers to disclose to the government copies of the information (including the content
6 of communications) further described in Section I of Attachment B. Upon receipt of the
7 information described in Section I of Attachment B, government authorized persons will
8 review that information to locate the items described in Section II of Attachment B.

9 3. The facts set forth in this Affidavit are based on my own personal
10 knowledge; knowledge obtained from other individuals during my participation in this
11 investigation, including other law enforcement officers; review of documents and records
12 related to this investigation; communications with others who have personal knowledge
13 of the events and circumstances described herein; and information gained through my
14 training and experience. Because this Affidavit is submitted for the limited purpose of
15 establishing probable cause in support of the application for a search warrant, it does not
16 set forth each and every fact that I or others have learned during the course of this
17 investigation.

18 4. Based on my training and experience and the facts as set forth in this
19 affidavit, there is probable cause to believe that violations of Title 18, United States Code,
20 Sections 541 (Entry of Goods Falsely Classified), 545 (Smuggling of Goods into the
21 United States), 1341 (Mail Fraud), 1343 (Wire Fraud), and 2320 (Trafficking in
22 Counterfeit Goods), and Title 49, United States Code, Section 5124 (Criminal Violations
23 of the Hazardous Materials Transportation Act) have been committed by Vitaliy
24 Yaremkin. There is also probable cause to search the information described in
25 Attachment A for evidence, instrumentalities, contraband or fruits of these crimes further
26 described in Attachment B.

SUMMARY OF INVESTIGATION

2 5. In July 2012, ICE-HSI received information that U.S. Customs and Border
3 Protection (CBP) had seized a shipment of counterfeit airbags that were destined for
4 Vancouver, Washington. The consignee for the shipment was YEVGENIY SMIRNOV,
5 5110 NE 93rd St., Vancouver, Washington 98665. The investigation to date has revealed
6 that YEVGENIY SMIRNOV is importing counterfeit airbags from foreign vendors,
7 mostly in China and Hong Kong. Our investigation has further revealed that Mr.
8 SMIRNOV sells the counterfeit airbags via the online auction website eBay and that
9 between October 2009, and May 2012, Mr. SMIRNOV sold approximately 511 airbags
10 via eBay.

11 6. The investigation further revealed that Mr. SMIRNOV was arrested by
12 Clark County Sheriff's Office (CCSO) detectives in May 2012, and later charged with
13 possession of stolen property, trafficking in stolen property and money laundering in
14 Clark County Superior Court. Those charges were based on a local investigation that
15 revealed Mr. SMIRNOV and his wife Lyudmila, were selling stolen goods from retail
16 stores throughout Oregon and southwest Washington via their eBay accounts. During the
17 local investigation, CCSO detectives executed a search warrant at the SMIRNOV's home
18 in May 2012, that resulted in the seizure of a large amount of stolen goods as well as
19 approximately 196 counterfeit airbags.

BACKGROUND REGARDING COUNTERFEIT AIRBAGS

21 7. Based on information from the National Highway Traffic Safety
22 Administration (NHTSA), I know that original equipment manufacturers (OEMs) design
23 airbag systems for their specific model vehicles. These systems use inflatable cushions or
24 airbags that typically are manufactured for the OEMs by Tier-1 automotive suppliers. The
25 airbag inflator fits into a module consisting of a woven nylon bag and a plastic cover that
26 is designed to open along tear seams during a deployment. In a crash, the inflator causes a
27 chemical reaction to produce gases that fill the airbag in a few milliseconds. Dual-stage

1 airbags are designed to inflate at different energy levels to protect the occupant under
 2 varying crash types. As a vehicle occupant contacts the airbag, the gas is vented through
 3 openings in the bag. Quality control is critical during the production of airbag modules
 4 because many American motorists' lives depend on this safety system. During the airbag
 5 production process, OEMs use automated inspections, X-rays, sampling, and testing as
 6 quality control measures.

7 8. According to the NHTSA, recently, airbag counterfeiters have entered the
 8 American market. I know from NHTSA testing reports that counterfeit airbags produce a
 9 range of results, from the airbag not deploying at all to catastrophic failures where the
 10 airbag produces a fireball and forcefully expels metal shrapnel at the test dummy. Based
 11 on information from other ICE-HSI investigators, the NHTSA and the FBI, I know that
 12 auto repair shops are buying and installing these counterfeit airbags into vehicles they
 13 repair in an effort to avoid the costs of genuine airbags.

14 9. I know based on training and experience and information from other agents
 15 who have investigated similar cases, that many counterfeit airbags are being imported
 16 from China in violation of U.S. intellectual property rights laws because they bear the
 17 OEMs' names, logos and trademarks. Counterfeit airbags enter U.S. commerce through
 18 shipping ports, often escaping the attention of CBP because they are sometimes described
 19 on shipping documents by designations not specific to airbags, e.g. "Miscellaneous Auto
 20 Parts," "Plastic Parts," "Spare Parts Steering Cover," rather than an accurate description
 21 as an "airbag." They also enter in shipments by air transport provided by companies like
 22 DHL, FedEx, and UPS. Airbags are hazardous materials under US DOT/Pipeline and
 23 Hazardous Materials Safety Administration (PHMSA) regulations because of the
 24 explosives they contain. It is difficult for PHMSA to exercise its regulatory authority
 25 because the description of the shipments are often inaccurate or false.

26 10. Based on information from the NHSTA and other investigators who have
 27 investigated counterfeit airbag sales, I know that once counterfeit airbags are in the U.S.,
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1 they are generally purchased through internet outlets such as eBay and Craigslist and
 2 subsequently installed into consumers' vehicles by independent repair shops (who may or
 3 may not know they are supplying counterfeits). To a lesser degree, these counterfeit
 4 airbags may be installed in vehicles by individual vehicle owners who have purchased the
 5 airbags via online services. Counterfeit airbags sales have grown significantly over the
 6 past few years because they are sold for hundreds of dollars less than OEM airbags and
 7 Chinese counterfeiters have made them readily available for an increasing number of
 8 popular vehicle models, including the Honda Accord and Toyota Camry.

9 **BACKGROUND REGARDING HAZMAT ENFORCEMENT RELATED TO**
 10 **COUNTERFEIT AIRBAGS**

11 11. The Federal Hazardous Materials Transportation Law (HMTA), United
 12 States Code Title 49, §§ 5101-5128, is the primary Federal statute governing the
 13 transportation of hazardous materials. The Hazardous Materials Regulations (HMR), 49
 14 CFR Parts 171-180, provide the regulatory framework for enforcement of the Federal
 15 statutes. HMTA (49 U.S.C. 5101, et seq.) directs the Secretary of Transportation to
 16 establish regulations for the safe and secure transportation of hazardous materials in
 17 commerce. In 49 CFR 1.53, the Secretary delegated authority to issue regulations for the
 18 safe and secure transportation of hazardous materials in commerce to the Pipeline and
 19 Hazardous Materials Safety Administration (PHMSA) Administrator. The Administrator
 20 issues the HMR under that delegated authority.

21 12. In general, the HMR establishes packaging, marking, labeling, shipping
 22 paper, and training requirements for the transportation of the hazardous materials
 23 designated in the table in 49 CFR § 171.101. More specifically, as indicated in the HMR,
 24 PHMSA issues approvals for the transportation of explosives. Every article design that
 25 meets the definition of an explosive must receive an approval from PHMSA before it can
 26 be transported, with very limited exceptions.

27 13. Airbags which deploy a pyrotechnic device meet the definition of an
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1 explosive for which an approval must be obtained before it is authorized for
 2 transportation in commerce. Any airbag for which an approval has not been issued by
 3 PHMSA is considered a forbidden explosive pursuant to 49 CFR § 173.54(a) and may not
 4 be offered for transportation or transported in commerce pursuant to 49 CFR § 173.51(a).
 5 The type of airbags involved in this investigation are inflated by a solid propellant. Each
 6 airbag incorporates a pyrotechnic device, known as an initiator or electric match,
 7 consisting of an electrical conductor cocooned in combustible material. A current pulse
 8 heats up the conductor, which in turn ignites the combustible material. This igniter
 9 triggers the chemical reaction that actually fills the nylon fabric airbag with gas. Sodium
 10 azide (NaN₃) and potassium nitrate (KNO₃) react very quickly to produce a large pulse of
 11 hot nitrogen gas. This gas inflates the bag, which literally bursts out of the steering wheel
 12 or dashboard at up to 200 mph as it expands. This pyrotechnic device is the basis for
 13 PHMSA's regulatory authority over airbag modules, and is the primary safety hazard
 14 associated with airbag modules.

15 14. Because of the inherent risks associated with introducing hazardous
 16 materials into the transportation environment, the HMR proscribes methods by which
 17 those transporting hazardous materials can make the public at large and emergency
 18 responders aware of these risks. These methods include the placarding of vehicles,
 19 affixing clear and informative labels onto packages, standardized language for marking
 20 packages and describing the materials on shipping papers, and providing emergency
 21 response information. Hazardous materials are considered undeclared when the shipper,
 22 and in some cases the carrier, fail to mark and label packages, provide shipping papers
 23 properly describing the hazardous materials, and (when required) placard the transport
 24 vehicle. If some of these requirements are fulfilled, the hazmat is no longer considered
 25 undeclared. However, a failure to fulfill any of these requirements is still a violation of
 26 the HMR, subject to civil or criminal penalties.

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THE INVESTIGATION

A. CBP Seizures of Counterfeit Airbags Destined for Yevgeniy Smirnov

3 15. In July 2012, ICE-HSI received information from CBP, located at the Los
4 Angeles International Airport (LAX) DHL processing facility, that a parcel containing 20
5 airbags had been intercepted on May 11, 2012. The parcel was shipped from Hong Kong,
6 China and was addressed to "Yevgen Smirnov, 5110 NE 93rd St., Vancouver,
7 Washington 98665." The package was labeled by the shipper as "Steering Wheel Cover
8 Samples" and had a declared value of \$160.00. The airbags bore trademarks registered by
9 Honda. The purported Honda airbags bore a stylized "H" for Honda. CBP Import
10 Specialist Luz Mesa determined that authentic airbags produced by this manufacturer
11 would have a total Manufacturer's Suggested Retail Price (MSRP) of \$12,706.00. CBP
12 Officers photographed the airbags and submitted them to Import Specialists who
13 determined that the airbags were counterfeit.

16. The shipper was identified as Hao Pengfei at 2 HOU RUI VILLAGE
17 HONG KONG HK. Further investigation has revealed that address in Hong Kong has
18 been connected to hundreds of seizures of counterfeit merchandise. Other known
shippers of counterfeit merchandise who are using that same address include: YFhex
Logistics and Hao Lian (Hao Lin).

B. YEVGENIY SMIRNOV and LYUDMILA SMIRNOV

20 17. YEVGENIY SMIRNOV is a native of the Ukraine and a naturalized citizen
21 of the United States as of April 27, 2009. Lyudmila Smirnova is a native of the Ukraine
22 and a naturalized citizen of the United States as of July 30, 2009. Mr. SMIRNOV and his
23 wife were arrested in May 2012 for Possession of Stolen Property, Trafficking in Stolen
24 Property and Money Laundering by the Clark County Sheriff's Office in Vancouver,
25 Washington. I have reviewed reports from CCSO that documented an investigation of
26 Mr. SMIRNOV and his wife related to trafficking in stolen retail goods. The CCSO
27 investigation revealed that Mr. SMIRNOV and his wife were purchasing large volumes of
28 stolen goods that were stolen from retail stores throughout Oregon and southwest

1 Washington and later selling these items via eBay.

2 18. In May 2012, CCSO detectives arrested the SMIRNOV's and executed a
 3 search warrant at their residence at 5110 NE 93rd St., Vancouver, Washington 98665.
 4 Among other things, the detectives seized approximately 196 airbags bearing Honda
 5 trademarks. On October 15, 2012, I examined and photographed the airbags at the Clark
 6 County Sheriff's Office. Many of the airbags either had no serial number or had the same
 7 serial number. Based on my training and experience I know this to be an indicator of a
 8 counterfeit airbag.

9 19. A query of CBP's databases revealed that Mr. SMIRNOV has received
 10 approximately 65 shipments from China, Hong Kong and Thailand and Great Britain
 11 between the time period of December 2009 and May 2012. Most of the shipments were
 12 addressed to "YEVGEN SMIRNOV" or "Jenya Smirnov." Some of the shipments,
 13 however, were addressed to "Lyudmila Smirnova." Forty one shipments were described
 14 as "Automotive Valve Bag," "Steering cover," "Steering Wheel Cover Samples," or "auto
 15 parts." The remainder of the shipments were described as "crest whitestrips," or "teeth
 16 whitestrips." The whitestrip shipments were all imported from Great Britain. Based on
 17 these descriptions, and my training and experience, I believe that additional shipments of
 18 counterfeit airbags were not detected by CBP and have been delivered to SMIRNOV.

19 **C. eBay and PayPal Records**

20 20. I know based on my training and experience that those involved in the sales
 21 of counterfeit automobile parts including counterfeit airbags, often advertise their sales
 22 via online auction websites such as eBay and online classified advertising sites such as
 23 Craigslist. As part of my investigation, I discovered two eBay/PayPal accounts that
 24 appear to be operated by YEVGENIY SMIRNOV and his wife LYUDMILA SMIRNOV.
 25 Based on my review of the sales history for the accounts, I found these accounts were
 26 used to offer airbags for sale that were typically advertised as new and were sold at prices
 27 well below MSRP. I know based on my training and experience that one of the primary
 28 motivations for selling counterfeit goods is the ability to sell the counterfeit goods at

1 prices well below MSRP for genuine goods. I believe that many, if not all, of the airbags
 2 sold by Mr. SMIRNOV on eBay were counterfeit.

3 **i. eBay account "crestsmile"**

4 21. I obtained subscriber records for the eBay account "crestsmile" from
 5 eBay/PayPal on November 19, 2012. The subscriber records show that the account was
 6 registered on October 4, 2009, by YEVGENIY SMIRNOV. The records for the account
 7 list an address of 5110 NE 93rd St., Vancouver, Washington 98665; a telephone number
 8 of (503) 309-2000 and the email address jenekmarket@gmail.com. I know based on my
 9 review of CCSO reports that 5110 NE 93rd Street, Vancouver, Washington 98665 is the
 10 residence of YEVGENIY SMIRNOV and his wife LYUDMILA SMIRNOV. The users
 11 IDs for the account were listed as "jenekmarket2010" from October 4, 2009 to June 3,
 12 2010, and "crestsmile" from June 3, 2010 to present. The shipping information for the
 13 account was listed as "Jenya Smirnov" at 5110 NE 93rd St., Vancouver, Washington
 14 98665.¹ Ebay records also showed the account had been suspended since May 26, 2012.

15 22. The PayPal account linked to the eBay account "crestsmile" and email
 16 address jenekmarket@gmail.com was registered to Jenya Smirnov. According to
 17 eBay/PayPal records the "crestsmile" account had posted 151 listings advertising the sale
 18 of multiple airbags. The records showed the "crestsmile" account had sold approximately
 19 508 airbags for a total of \$105,420.00.

20 **ii. eBay account "vipsmile"**

21 23. Records provided by eBay/PayPal showed the eBay User ID of "vipsmile"
 22 was registered by LYUDMILA SMIRNOVA at 5110 NE 93rd St., Vancouver,
 23 Washington 98665. Subscriber information for the account showed that SMIRNOVA
 24 opened the account on March 30, 2010, with the email address of violka410@gmail.com
 25 and the account was suspended on May 26, 2012. The telephone number listed for the
 26 account is (360) 241-8780. According to eBay/PayPal records the "vipsmile" account

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1 Jenya is the diminutive name for YEVGENIY.

1 had posted eight listings advertising the sale of airbags and sold three airbags.

2 **iii. Current eBay Activity**

3 iv. I have monitored the above accounts recently by searching for any current
 4 listings related to airbags. It does not appear that Mr. SMIRNOV or his wife have listed
 5 any airbags for sale since May 2012, when the eBay accounts were suspended.

6 **D. Honda Investigation**

7 24. I have interviewed members of Honda North America's intellectual
 8 property rights (IPR) team regarding the trafficking of counterfeit airbags. According to
 9 Honda, they engage in efforts to detect and stop the sale of counterfeit airbags due to
 10 safety concerns related to counterfeit airbags and to protect their intellectual property
 11 rights and profits from the sales of genuine goods. Honda North America's IPR team
 12 conducted three test purchases via eBay of Honda airbags from the eBay
 13 account "crestsmile." I know from my training and experience that "test purchases" are a
 14 form of undercover purchases that rights holders often conduct in furtherance of private
 15 efforts to enforce their intellectual property rights. Rights holders will frequently purchase
 16 goods bearing their trademarks or goods for which they own a copyright, in an effort to
 17 determine if the goods are counterfeit and, if so, develop evidence they might use to
 18 pursue civil remedies for trademark or copyright violations or, in certain cases, for
 19 referral to law enforcement for criminal investigation.

20 25. Honda provided agents with images of the computer screens (screenshots)
 21 and photographs of the item they received as part of three test purchases they conducted
 22 while investigating the eBay seller "crestsmile." The screenshots include images of the
 23 eBay listings that advertised the airbag sales. I have reviewed the records from eBay and
 24 summarized the relevant information for each Honda test purchase below:

25 a. **Test Purchase 1 - Listing 250785231569.** On April 12, 2011, Honda's
 26 IPR team reviewed eBay listing 250785231569 from eBay user "crestsmile" that offered
 27 Honda airbags for sale with the following product description: "08-11 2008 2009 2010
 28 Honda Accord driver airbag airbags." The item condition was listed as "New" and the

1 listing indicated that there were “4 available” at a price of \$149.00 plus \$49.99 shipping.
 2 According to Honda the MSRP for this type of genuine Honda airbag is approximately
 3 \$600.00. The item’s location was listed as crestsmile, United States. Honda’s IPR team
 4 placed an order for this item and received an airbag bearing a Honda trademark in the
 5 form of the stylized “H” delivered via a United States Postal Service Priority Mail
 6 package. The return address on the shipping label was “Yevgen Smirnov, 5110 NE 93rd
 7 Street. Vancouver, WA 98665.” Honda received a PayPal receipt via email from
 8 “jenekmarke@gmail.com” which indicated the charge would appear on the credit card
 9 statement as “PAYPAL JENEKMARKET.” The airbag was subsequently tested by
 10 Honda North American and was found to be counterfeit.

11 **b. Test Purchase 2 - Listing 260846051712:** In September 2011, Honda’s
 12 IPR team reviewed eBay listing 260846051712 from eBay user “crestsmile” that offered a
 13 Honda airbags for sale with the following product description “2006 2007 2008 2009
 14 2010 Honda CIVIC driver airbag SRS.” The item condition was listed as “New” and the
 15 price was \$179.00 with free shipping. The listing indicated that 4 had already been sold
 16 at this price. According to Honda the MSRP for this type of genuine Honda airbag is
 17 approximately \$600.00. The item’s location was listed as crestsmile, United States.
 18 Honda’s IPR team placed an order for this item and received an airbag bearing a Honda
 19 trademark in the form of the stylized “H” delivered via a United States Postal Service
 20 Priority Mail package. The return address on the shipping label was “Yevgen Smirnov,
 21 5110 NE 93rd Street. Vancouver, WA 98665.” The airbag was subsequently tested by
 22 Honda North American and was found to be counterfeit.

23 **c. Test Purchase 3 - Listing 250892812231:** Honda’s IPR team also
 24 reviewed eBay listing 250892512231 in September 2011, and found this listing by eBay
 25 user “crestsmile” offered airbags for sale with the following product description “2006
 26 2007 2008 2009 2010 Honda CIVIC driver airbag SRS.” This listing also listed the item
 27 condition as “New,” and indicated that “crestsmile” had “3 available” at a price of
 28 \$149.00 plus free shipping. According to Honda the MSRP for this type of genuine

1 Honda airbag is approximately \$600. The item's location was listed as crestsmile, United
 2 States. Honda's IPR team placed an order for this item and received an airbag bearing a
 3 Honda trademark in the form of the stylized "H" delivered via a United States Postal
 4 Service Priority Mail package. The return address on the shipping label was again
 5 "Yevgen Smirnov, 5110 NE 93rd Street. Vancouver, WA 98665." The airbag was
 6 subsequently tested by Honda North American and was found to be counterfeit.

7 26. Honda also provided me with screenshots of ten additional eBay
 8 sales listings for suspected counterfeit airbags under the eBay user name "crestsmile."
 9 The listings included both driver and passenger side airbags for a wide variety of Honda
 10 models including the Accord, Civic, Pilot and SRV, all at prices well below MSRP.
 11 According to Honda, they had sent requests to eBay to remove many of these sales
 12 listings based on trademark infringement and had received confirmation from eBay that
 13 the listings had been removed and that eBay had notified the seller and all the
 14 participating bidders that the listings had been removed based on Honda's request.

15 27. I know based on my review of eBay listing removal notices that when eBay
 16 removes a listing based on a notice from a trademark rights holder, that eBay informs the
 17 seller that the item has been removed because of the right's holder's claim that the item is
 18 fake or counterfeit. eBay notifies the seller that selling counterfeit goods is against the
 19 law and provides links to information regarding the sales of counterfeit goods, trademark
 20 law and information on how to contact eBay if the seller believes the listing has been
 21 removed in error.

22 NATURE OF THE ELECTRONIC COMMUNICATION SERVICES UTILIZED

23 A. Google gmail accounts

24 28. In my training and experience, I have learned that Gmail provides a variety
 25 of on line services, including electronic mail ("e mail") access, to the general public.
 26 Gmail allow subscribers to obtain e mail accounts at the domain name gmail.com like the
 27 e mail accounts listed in Attachment A. Subscribers obtain an account by registering with
 28 Gmail. During the registration process, Gmail, asks subscribers to provide basic personal

1 information. Therefore, the computers of Gmail are likely to contain stored electronic
 2 communications (including retrieved and unretrieved e-mail for Gmail subscribers) and
 3 information concerning subscribers and their use of Gmail services, such as account
 4 access information, e-mail transaction information, and account application information.
 5 In my training and experience, such information may constitute evidence of the crimes
 6 under investigation because the information can be used to identify the account's user or
 7 users.

8 29. In general, an e-mail that is sent to a Gmail subscriber is stored in the
 9 subscriber's "mail box" on Gmail's servers until the subscriber deletes the e mail. If the
 10 subscriber does not delete the message, the message can remain on Gmail servers's
 11 indefinitely. Even if the subscriber deletes the e mail, it may continue to be available on
 12 Gmail's servers for a certain period of time.

13 30. When the subscriber sends an e mail, it is initiated at the user's computer,
 14 transferred via the Internet to Gmail's servers, and then transmitted to its end destination.
 15 Gmail will often save a copy of the e-mail sent. Unless the sender of the e mail
 16 specifically deletes the e-mail from the Gmail server, the e mail can remain on the system
 17 indefinitely. Even if the sender deletes the e mail, it may continue to be available on
 18 Gmail's servers for a certain period of time.

19 31. A sent or received e-mail typically includes the content of the message,
 20 source and destination addresses, the date and time at which the e mail was sent, and the
 21 size and length of the e-mail. If an e-mail user writes a draft message but does not send
 22 it, that message may also be saved by Gmail but may not include all of these categories of
 23 data.

24 32. Subscribers to Gmail might not store on their home computers copies of the
 25 e-mails stored in their Gmail account. This is particularly true when they access their
 26 Gmail account through the web, or if they do not wish to maintain particular e-mails or
 27 files in their residence.

28 33. In general, e-mail providers like Gmail ask each of their subscribers to

1 provide certain personal identifying information when registering for an e-mail account.
 2 This information can include the subscriber's full name, physical address, telephone
 3 numbers and other identifiers, alternative e-mail addresses, and, for paying subscribers,
 4 means and source of payment (including any credit or bank account number). In my
 5 training and experience, such information may constitute evidence of the crimes under
 6 investigation because the information can be used to identify the account's user or users.

7 34. E-mail providers typically retain certain transactional information about the
 8 creation and use of each account on their systems. This information can include the date
 9 on which the account was created, the length of service, records of log in (i.e., session)
 10 times and durations, the types of service utilized, the status of the account (including
 11 whether the account is inactive or closed), the methods used to connect to the account
 12 (such as logging into the account via Gmail's website), and other log files that reflect
 13 usage of the account. In addition, e-mail providers often have records of the Internet
 14 Protocol address ("IP address") used to register the account and the IP addresses
 15 associated with particular logins to the account. Because every device that connects to
 16 the Internet must use an IP address, IP address information can help to identify which
 17 computers or other devices were used to access the e-mail account.

18 35. In some cases, e-mail account users will communicate directly with an e-
 19 mail service provider about issues relating to the account, such as technical problems,
 20 billing inquiries, or complaints from other users. E-mail providers typically retain records
 21 about such communications, including records of contacts between the user and the
 22 provider's support services, as well records of any actions taken by the provider or user as
 23 a result of the communications. In my training and experience, such information may
 24 constitute evidence of the crimes under investigation because the information can be used
 25 to identify the account's user or users.

26 **B. eBay/PayPal Accounts**

27 36. In my training and experience I have learned that eBay provides a variety of
 28 on line services related to buying and selling goods to the general public via eBay's

1 online auction website. In general, eBay subscribers who wish to sell an item (eBay
 2 sellers) will post the item for sale by entering a basic description of the item that is used
 3 for the listing title and then any additional details they wish including photographs and
 4 more detailed descriptions of the item that eBay includes in the body of the listing. eBay
 5 subscribers who wish to purchase goods (eBay buyers) generally use the search
 6 functionality of the eBay website to locate an item of interest. eBay buyers will bid on
 7 goods based on a set of rules which dictate how goods are sold to the highest bidder.
 8 eBay allows subscribers to obtain a username or store name that they will use to identify
 9 themselves for the purposes of buying and selling goods online. Subscribers obtain an
 10 account by registering with eBay. During the registration process, eBay asks subscribers
 11 to provide basic subscriber information such as a name, telephone number, and e-mail
 12 address. eBay also records information such as the user's history of account access, the
 13 type of goods the user purchased, the type of goods the user has offered for sale, the
 14 prices the user has paid for goods, the prices for which the user has sold goods, and
 15 "feedback" comments from other users who have interacted with the subscriber indicating
 16 the other user's evaluation of the subscriber's quality of service.

17 37. eBay subscribers must also provide information to establish a Paypal
 18 account. The PayPal account is linked to the eBay subscriber's account and records for
 19 PayPal are maintained by the same entity. PayPal provides a conduit for paying for or
 20 receiving payment for goods. PayPal maintains information including information the
 21 user supplies regarding bank and credit card accounts used to fund purchase and receive
 22 the proceeds of sales. In my training and experience, such information may constitute
 23 evidence of the crimes under investigation because the information can be used to
 24 identify the account's user or users and the location of proceeds of the crimes. Therefore,
 25 the computers of eBay/PayPal are likely to contain information including basic subscriber
 26 information and business records concerning subscribers and their use of eBay/PayPal
 27 services that are available pursuant to a subpoena, but may also be obtained via a search
 28 warrant.

1 38. eBay users also have the capability to send messages with questions about
2 items. These eBay internal messages are stored on eBay's computers. Therefore, in
3 addition to basic subscriber records and business records related to the subscriber, the
4 computers of eBay are likely to contain stored electronic communications (including
5 retrieved and un-retrieved messages for eBay subscribers). In my training and
6 experience, such information may constitute evidence of the crimes under investigation
7 because the information can be used to show the communication that occurred between
8 buyers and sellers which may include communications regarding the authenticity of the
9 goods.

10 39. On November 27, 2012, I sent a preservation letter to Google and asked that
11 the contents of the gmail accounts identified above be preserved, under authority of Title
12 18, United States Code, Section 2703(f)(1), for a period of 90 days. I have not delivered
13 a preservation request to eBay but based on eBay's records retention policies, I believe
14 the records I am seeking will still be present on eBay's servers.

RELEVANT STATUTES

A. Entry of Goods Falsely Classified

40. Title 18, United States Code, Section 541 provides in relevant part:

Whoever knowingly effects any entry of goods, wares, or merchandise, at less than the true weight or measure thereof, or upon a false classification as to quality or value, or by the payment of less than the amount of duty legally due, shall be fined under this title or imprisoned not more than two years, or both.

B. Smuggling Goods Into the United States

41. Title 18, United States Code, Section 545, provides in relevant part:

Whoever knowingly and willfully, with intent to defraud the United States, smuggles, or clandestinely introduces or attempts to smuggle or clandestinely introduce into the United States any merchandise which should have been invoiced, or makes out or passes, or attempts to pass, through the customhouse any false, forged, or fraudulent invoice, or other document or paper;

or

Whoever fraudulently or knowingly imports or brings into the United States, any merchandise contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise after

1 importation, knowing the same to have been imported or brought into the United
2 States contrary to law

3 Shall be fined under this title or imprisoned not more than 20 years, or both.

4 **C. Merchandise bearing American trade mark**

5 42. Title 19, United States Code, Section 1526 provides in relevant part:

6 **(a) Importation prohibited**

7 Except as provided in subsection (d) of this section, it shall be unlawful to import
8 into the United States any merchandise of foreign manufacture if such
9 merchandise, or the label, sign, print, package, wrapper, or receptacle, bears a
10 trademark owned by a citizen of, or by a corporation or association created or
11 organized within, the United States, and registered in the Patent and Trademark
12 Office by a person domiciled in the United States, under the provisions of sections
13 81 to 109 of title 15, and if a copy of the certificate of registration of such
14 trademark is filed with the Secretary of the Treasury, in the manner provided in
15 section 106 of said title 15, unless written consent of the owner of such trademark
16 is produced at the time of making entry.

17 **D. Trafficking in Counterfeit Goods**

18 43. Title 18, United States Code, Section 2320(a) and (b) provide in relevant

19 part:

20 (a) Whoever; intentionally traffics or attempts to traffic in goods or services
21 and knowingly uses a counterfeit mark on or in connection with such goods or
22 services, or intentionally traffics or attempts to traffic in labels, patches, stickers,
23 wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases,
24 hangtags, documentation, or packaging of any type or nature, knowing that a
25 counterfeit mark has been applied thereto, the use of which is likely to cause
26 confusion, to cause mistake, or to deceive, shall, if an individual, be fined not more
27 than \$2,000,000 or imprisoned not more than 10 years, or both.

28 44. The term "counterfeit mark" means a spurious mark that:

21 (A) is used in connection with trafficking in any goods, services, labels,
22 documentation or packaging of any type and nature;

23 (B) that is identical with, or substantially indistinguishable from, a mark registered
24 on the principal register of the United States Patent and Trademark Office
25 (USPTO) and in use by the owner of the mark, whether or not the defendant knew
26 such mark was so registered or in use;

27 (C) that is applied to or used in connection with the goods or services for which
28 the mark is registered with the USPTO or is applied to or consists of a label,
29 documentation or packaging of any type and nature that is designed, marketed, or
30 otherwise intended to be used on or in connection with the goods or services for
31 which the mark is registered with the USPTO; and

(D) the use of which is likely to cause confusion, to cause mistake, or to deceive.

A "spurious" mark is one that is not genuine or authentic. A genuine or authentic mark becomes counterfeit when it is used in connection with something else that is counterfeit.

E. Criminal Violations of the Hazardous Materials Transportation Act

45. Title 49, United States Code, Section 5124 provides in relevant part:

(a) In general. -- A person knowingly violating section 5104(b) [pertaining to tampering with markings, labels or packing of hazardous materials] or willfully or recklessly violating this chapter or a regulation, order, special permit, or approval issued under this chapter shall be fined under title 18, imprisoned for not more than 5 years, or both; except that the maximum amount of imprisonment shall be 10 years in any case in which the violation involves the release of a hazardous material that results in death or bodily injury to any person.

(b) Knowing violations.--For purposes of this section--

(1) a person acts knowingly when—

(A) the person has actual knowledge of the facts giving rise to the violation;

or

(B) a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge; and

(2) knowledge of the existence of a statutory provision, or a regulation or a requirement required by the Secretary, is not an element of an offense under this section.

(c) Willful violations. -- For purposes of this section, a person acts willfully when

(1) the person has knowledge of the facts giving rise to the violation; and

(2) the person has knowledge that the conduct was unlawful.

(d) Reckless violations.--For purposes of this section, a person acts recklessly when the person displays a deliberate indifference or conscious disregard to the consequences of that person's conduct.

BACKGROUND REGARDING TRADEMARKS

46. Based on my training and experience, I know the United States Patent and Trademark Office (PTO) is an agency of the United States which promotes the progress of science and the useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries (Article I, Section 8 of the

1 United States Constitution). Among PTO's major functions are the examination and
 2 registration of trademarks and the dissemination of trademark information. Through the
 3 registration of trademarks, PTO assists businesses in protecting their investments,
 4 promoting goods and services, and safeguarding consumers against confusion and
 5 deception in the marketplace. By disseminating trademark information, PTO promotes an
 6 understanding of intellectual property protection and facilitates the development and
 7 sharing of new technologies worldwide. Registration of a producer's trademark on PTO's
 8 principal register gives notice to the world of the producer's exclusive right to use and to
 9 protect that trademark.

10 47. In general terms, a trademark is a word, name, symbol, or device, or any
 11 combination thereof, that is intended to distinguish one producer's goods from those of
 12 other producers and to indicate the source of the goods. Trademark law helps ensure that
 13 a trademark can serve this function of distinguishing a producer's goods, because it
 14 prohibits other producers from using a similar mark in a way that is "likely to cause
 15 confusion" among consumers (i.e. by making consumers wonder which producers created
 16 which products). Trademark law broadly prohibits uses of trademarks, trade names, and
 17 trade dress that are likely to cause confusion about the source of a product or service.

18 **TRADEMARKS RELEVANT TO THIS INVESTIGATION**

19 48. Based on my training and experience, I know that Honda and Toyota
 20 develop, advertise, market, distribute, and license, a number of automobile parts including
 21 airbags. I know from my investigation, that genuine Honda and Toyota airbags have
 22 certain attributes. These attributes include, but are not limited to, how the product is
 23 packaged, the markings that appear on the packaging, the markings that appear on the
 24 product, the unique serial numbers on the product, and the construction of the product.

25 49. Based on my training and experience, I know that Honda and Toyota have
 26 registered a number of copyrights, and trademarks and/or service marks, with the United
 27 States Copyright and United States Patent and Trademark Offices, respectively for use
 28 with and in connection with genuine Honda and Toyota airbags. Honda and Toyota have

been and still are, the sole owners of all rights, title and interest in, and to, their copyrights, trademarks, and/or service marks, and have made continuous use of these copyrights, trademarks, and/or service marks.

INFORMATION TO BE SEARCHED AND THINGS TO BE SEIZED

50. I anticipate executing this warrant under the Electronic Communications Privacy Act, in particular 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A), by using the warrant to require Gmail and eBay to disclose to the government copies of the records and other information (including the content of communications) particularly described in Section I of Attachment B. Upon receipt of the information described in Section I of Attachment B, government authorized persons will review that information to locate the items described in Section II of Attachment B.

REQUEST FOR NONDISCLOSURE AND SEALING

51. The government requests, pursuant to the preclusion of notice provisions of Title 18, United States Code, Section 2705(b), that Gmail and eBay/PayPal be ordered not to notify any person (including the subscriber or customer to which the materials relate) of the existence of this warrant for such period as the Court deems appropriate. The government submits that such an order is justified because notification of the existence of this Order would seriously jeopardize the ongoing investigation. Such a disclosure would give the subscriber an opportunity to destroy evidence, change patterns of behavior, notify confederates, or flee or continue flight from prosecution.

52. It is further respectfully requested that this Court issue an order sealing, until further order of the Court, all papers submitted in support of this application, including the application and search warrant. I believe that sealing this document is necessary because the items and information to be seized are relevant to an ongoing investigation, and law enforcement may still attempt to execute a search warrant at the target's residence before the investigation concludes. Premature disclosure of the contents of this affidavit and related documents may have a significant and negative impact on the continuing investigation and may severely jeopardize its effectiveness.

CONCLUSION

2 53. Based on the forgoing, I request that the Court issue the proposed search
3 warrant. This Court has jurisdiction to issue the requested warrant because it is "a court
4 of competent jurisdiction" as defined by 18 U.S.C. § 2711. 18 U.S.C. §§ 2703(a),
5 (b)(1)(A) & (c)(1)(A). Specifically, the Court is "a district court of the United States . . .
6 that has jurisdiction over the offense being investigated." 18 U.S.C. § 2711(3)(A)(I).
7 Pursuant to 18 U.S.C. § 2703(g), the presence of a law enforcement officer is not required
8 for the service or execution of this warrant. Accordingly, by this Affidavit and Warrant I
9 seek authority for the government to search all of the items specified in Section I,
10 Attachment B (attached hereto and incorporated by reference herein) to the Warrant, and
11 specifically to seize all of the data, documents and records that are identified in Section II
12 to that same Attachment.

Trina Ledbetter
Special Agent
U.S. Immigration and Customs Enforcement
Homeland Security Investigations

SUBSCRIBED and SWORN to before me this 15 day of January, 2013

David W. Christel
United States Magistrate Judge

ATTACHMENT A
Accounts to be Searched

The electronically stored information and communications contained in, related to, and associated with, including all preserved data associated with the following eBay/PayPal accounts:

crestsmile; and
vipsmile

as well as all other subscriber and log records associated with the accounts, which are located at premises owned, maintained, controlled or operated by eBay/PayPal, located at 2145 Hamilton Avenue, San Jose, CA 95125.

ATTACHMENT B
ITEMS TO BE SEIZED

I. Items to be to be Provided by eBay/PayPal, for search:

All electronically stored information and communications associated, including all preserved data, with the eBay/PayPal accounts:

crestsmile; and

vipsmile

Including the following:

1. All subscriber records associated with the specified accounts, including 1) name; 2) address; 3) records of session times; 4) length of service (including start date) and types of services utilized; 5) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address such as internet protocol address; 6) account log files (login IP address, account activation IP address, and IP address history); 7) detailed billing records/logs; 8) means and source of payment; and 9) lists of all related accounts;
2. all account information including personal information, addresses, communication preferences, site preferences, and/or Feedback;
3. all account activity including listing history, bidding history, watch lists, wish lists, saved searches, saved sellers, purchase history, and/or selling history;
4. all message content including unread, read, flagged, filtered or stored messages from the user's inbox, sent messages box, trash box, archive, or any user or eBay created folders, including sent or received messages;
5. all PayPal account information including payments received, payments sent, withdrawal history, statements, credit card information, and/or bank account information;

9. any records of communications between eBay/PayPal, and any other person about issues relating to the account, such as technical problems, billing inquiries, or complaints from other users about the specified accounts. This to include records of contacts between the subscriber and the provider's support services, as well as records of any actions taken by the provider or subscriber as a result of the communications.

II. Items to be Seized

From all electronically stored information and communications contained in, related to, and associated with, including all preserved data associated with, the eBay/PayPal accounts:

crestsmile; and

vipsmile

1. All messages, documents, and profile information, attachments, or other data that serves to identify any person or persons who use or access the account specified, or who exercise in any way any dominion or control over the specified account;
2. Any content pertaining to the sales or purchasing of automobile airbags;
3. Any content pertaining to the importation of automobile airbags;
4. Any content pertaining to the manufacture of automobile airbags;
5. Any content pertaining to the authenticity of automobile airbags;
6. Any content that may reveal knowledge of the counterfeit nature of automobile airbags or other automobile parts for sale or purchase;
7. Any content related to notices from trademark rights holders regarding improper use of trademarks;
8. Any content related to communications with customers or suppliers regarding the authenticity of automobile airbags and/or the quality or safety of automobile airbags;

9. Any content pertaining to counterfeiting of automobile parts, trademark violations related to automobile parts, or copyright infringement relating to automobile parts;
10. Any content pertaining to the regulation of the shipping and/or storage of automobile airbags;
11. Any content pertaining to the safety of automobile airbags;
12. Any content pertaining to hazardous materials regulations or content that reveals knowledge of hazardous materials regulation;
13. Any content pertaining to Customs regulations and enforcement related to proper labeling of shipments;
14. Any content that may reveal the location of proceeds generated through the sales of automobile airbags;
15. Any content that may reveal the source of automobile airbags;
16. Any photographs of automobile airbags, airbag parts or automobile trademark symbols;
17. Any photographs that may identify co-conspirators, associates or customers;
18. Any address lists or contact lists associated with the specified accounts that may reveal co-conspirators, associates or customers;
19. All subscriber records associated with the specified accounts, including name, address, local and long distance telephone connection records, or records of session times and durations, length of service (including start date) and types of service utilized, telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address, and means and source of payment for such service) including any credit card or bank account number;

20. Any and all other log records, including IP address captures, associated with the specified account;
21. Any records of communications between eBay/PayPal and any person about issues relating to the accounts, such as technical problems, billing inquiries, or complaints from other users about the specified accounts. This to include records of contacts between the subscriber and the provider's support services, as well as records of any actions taken by the provider or subscriber as a result of the communications.